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Author:
Hearst, William Randolph

Title:
Truths about the trusts

Place:
[n.p.]
Date:
1916

94-82201-5
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Hearst, William Randolph, 1863–

Truths about the trusts, by William Randolph Hearst. [Rahway, N. J.] Priv. print. [Quinn & Boden company] 1916.

4 p. l., 50 p. 19½cm.

1. Trusts, Industrial. I. Title.

Library of Congress HD2795.H45 17-236

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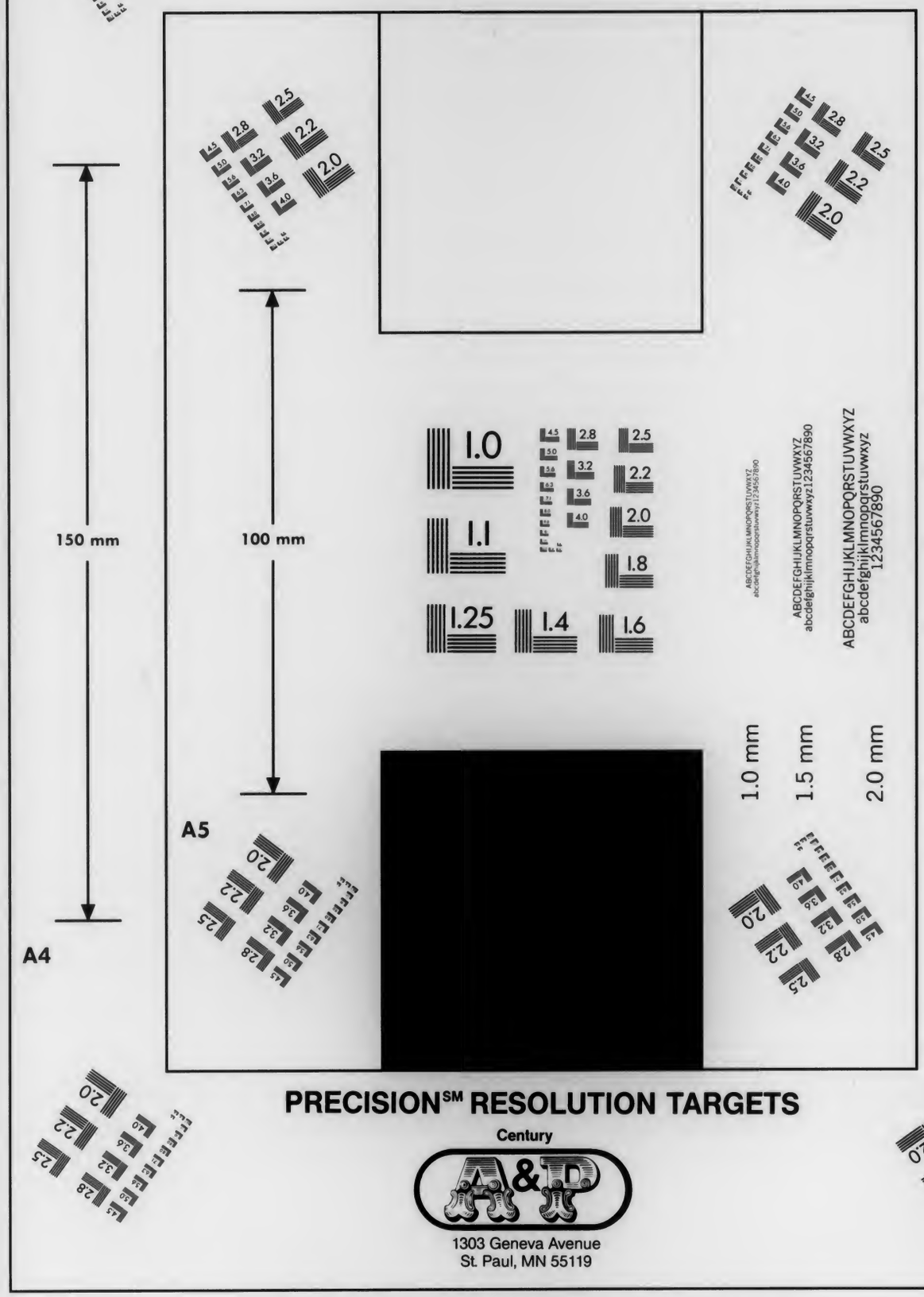

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TRUTHS
ABOUT THE TRUSTS

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TRUTHS ABOUT THE TRUSTS

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ABOUT THE TRUSTS

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TRUTHS ABOUT THE TRUSTS

Combination a Phase of Progress

Its Evils Must Be Eliminated, Its Advantages Must Be Retained

THE trust question is a question of which we may truly say that it will never be settled until it is settled right, and it will never be settled right except by eliminating the evils of combination and retaining the benefits and advantages of combination.

All the exponents of high finance or low finance, of big business or little business who affect to desire to see business activity encouraged and business conditions settled, must make up their minds to see first the trust question settled.

If all those who profess to want to see business conditions settled will earnestly and honestly endeavor to have the trust question settled, an intelligent solution of the trust problem will be speedily secured.

In any rightful and, consequently, in any permanent settlement of the trust problem, we have to consider the retention of the benefits of combination quite as much as the elimination of the evils attendant upon combination.

In the attempt to solve the trust problem,

therefore, we should first have a clear understanding of what a trust is, what the advantages of combination are and what the evils of combination are, and with that understanding we shall be able without great difficulty to form a plan and construct a legal system which will eliminate the evils and retain the benefits.

I would define a trust as a combination in business sufficiently large and sufficiently comprehensive to be able practically to control production and prices.

Nearly all trusts are formed with the definite object and intention of controlling production and prices.

The evils of the trust lie largely in the abuse of this power to control production and prices.

Limitation of production means limitation of the creation of wealth and also limitation of the employment of labor, which is limitation of the distribution of wealth.

The power to fix prices means the power to fix prices too low for a competitor or too high for the consumer. It means, first, coercion, and then extortion.

The advantages of combination are the advantages of co-operation and superior organization. These advantages find expression in economy of production and simplicity of operation, in compact and capable organization and in the elimina-

tion of the enormous and unnecessary expense and waste, and wear and tear of competition.

A monopoly has not only the advantages of combination, which enable it to produce more cheaply, but the advantage of an exclusive market, which enables it to charge more dearly. A monopoly unregulated by government will invariably make an exorbitant and unreasonable charge for its product, and therefore an exorbitant and unreasonable profit.

The economic advantages of combination therefore make it possible for an article to be produced of a better quality and at a cheaper cost, but they do not compel the sale of the product at a cheaper price.

In other words, combination is a benefit in the conduct of a business, but for it to become a distinct benefit to the consuming public the public must be allowed to participate in its advantages.

Clearly, then, the objective of our efforts should be not to destroy combination and all the essential advantages of combination, but merely to impose conditions which will insure for the consuming public some share of the advantages which combination creates.

Having defined a trust and having analyzed its advantages and disadvantages, let us proceed to a plan which will retain its advantages and eliminate its disadvantages.

There are three methods of approaching the trust problem, which have been developed by acute trust conditions within the last few years.

One of these may be designated as the Roosevelt method. The Roosevelt method was to divide the trusts into good trusts and into bad trusts and to go to extreme lengths in assailing those that were declared by him to be the bad trusts, and to equally extreme and sometimes illegal lengths in aiding and protecting those that were declared by him to be the good trusts.

But the good trusts and the bad trusts of Roosevelt had no differentiation in economics, but only in politics. The good trusts were the trusts that politically supported Roosevelt and the bad trusts were the trusts that politically opposed Roosevelt. Obviously no permanent solution of the trust problem nor any beneficial action for the people lay along these lines.

The second method of approaching the trust problem may be designated as the Supreme Court method, and this method attempts to remove the outward form of trust organization and to retain the inner and essential evil of trust oppression, extortion and coercion.

The third method may be designated as the Taft method, and is simply a crude attempt to destroy combination and restore business to the primitive principle of competition.

All three of these methods are as foolish as they are futile. There is no solution of the trust problem in the Roosevelt method. There are not good trusts and bad trusts, but there are in every trust some things which are good and some things which are bad. I repeat, therefore, that the only intelligent method of procedure is to construct a legal system and impose governmental conditions which will retain what is good and eliminate what is bad.

There is no solution of the trust problem in the Supreme Court method, and there never will be a solution in any false or fraudulent treatment of the trust problem.

Trust extortion and oppression enter so intimately into every phase of the life of the people that the people can never be deceived by any pretended solution of the trust problem which promises to give them relief and does not actually give them relief.

The overwise judges and overshrewd business men who are trying to deceive the people by this form of trust reorganization are deceiving no one but themselves and are accomplishing nothing but a continued disturbance of business conditions.

Finally, there is no solution of the trust problem in the Taft method, because the advantages of combination are real and are recognized and

because the return to competition is impractical and therefore impossible.

The fact that a proportion of automobiles have injured pedestrians in time past and are injuring pedestrians to-day, and will even in the future injure pedestrians, would not lead Mr. Taft to propose the destruction of all automobiles. The remedy lies not in a return to primitive forms of locomotion; it lies in the encouragement of improved forms of locomotion and in the prevention and punishment of specific acts of injury.

Business will no more return to competition after it has learned the superior advantages of combination than a child will return to crawling after it has learned to walk.

The proposition to return business to a competitive basis is absurd and unreasonable, and would be injurious in the long run to the producer, to the consumer, and to the wealth-creating power of the country.

Competition compels large expense in unproductive effort, and as every expense enters into the cost of production, competition compels wasted effort and results in a higher cost of production for every article.

Competition means the division of business into smaller units, and the smaller the business the larger must be the percentage of profit to make it successful.

A newsboy makes, and must make, 66 2/3 per cent. on every paper he sells. A newspaper owner is more than satisfied to make 10 per cent. on his investment.

That competition frequently imposes as unnecessary expenses upon the purchaser as upon the producer is shown in the telephone situation in St. Louis. There are three competing telephone systems, and in order to obtain communication with any other telephone subscriber in any other section of St. Louis, a subscriber must pay for the rent and installation of all three telephone systems.

These are disadvantages more or less inseparable from competition. The corresponding advantages of combination are equally obvious.

A combination of newspapers publishing in different cities can obviously afford to secure better talent and to give its readers better product at the same price, or the same product at a cheaper price, than individual newspapers not operating in combination.

A great department store, buying in quantity and selling in quantity and operating in the most economical manner, can obviously afford to sell its customers a better article for the same price or the same article for a cheaper price than the small institution operating without the department store's advantages of combination.

Combination is merely an expression of superior business intelligence, of a faculty for better and higher organization; it is a phase of progress, a stage of development, a form of enlightenment, a result of experience and knowledge and of capacity for large affairs.

Combination and co-operation are as essential to progress and cheap production as labor-saving machinery is.

Greater combination, greater co-operation and better organization will never cease until business ceases to progress and develop, and an attempt to stop the progress of combination, co-operation and organization is truly an attempt to stop the natural progress and development of business.

The waste and expense of competition being, therefore, sufficiently clear, and the definite advantages of combination being equally evident, the question to take up in conclusion is the actual legislative enactments which are necessary, not to destroy combination but to eliminate the evils consequent upon the misuse of the power of combination.

The Sherman Law is not a divine document. It has no direct inspiration from on high. It was not handed down along with the Ten Commandments on Mt. Sinai. The Sherman Law is a distinctly human production, liable to human faults and failings, and peculiarly liable to them be-

cause constructed at a time when experience with trusts and consequently knowledge of trusts was much less than it is to-day. When the Sherman Law was passed, combination was in its infancy. Now, combination is in the full swing of growth and development. We know more of combination than we did. We know more of its evils and more of its advantages and we are becoming better able to discriminate between its evils and advantages.

We have seen that the evils of the trusts are due to the fact that their control of products and prices enables them to fix prices at an unnaturally low level in order to drive a competitor out of business, and then at an unnaturally high level in order to make more than a rightful and reasonable profit.

In order to form a combination large enough to control prices a considerable proportion of the institutions in a given industry are frequently absorbed at an excessive valuation. This means an excessive capitalization of the combination, and this in turn compels high prices in order to pay interest on the excessive capitalization.

The United States Steel Corporation is estimated by some authorities to have been capitalized at nearly ten times the value of the individual concerns which compose it, and that means that in order to pay 6 per cent. dividends it must

realize a profit which would have meant 60 per cent. in dividends to the original enterprises.

Overcapitalization, then, is one of the causes of trust high prices. Yet it is obvious that a trust like the Standard Oil Trust, which has secured control of the market without overcapitalization, is still able to increase prices and is disposed to do so.

The evils of the trust clearly lying in overcapitalization and excessive prices, the remedy clearly lies in governmental limitation of capitalization and regulation of either prices or profits.

When a combination reaches a certain size and extent it becomes a virtual monopoly, and when it becomes a virtual monopoly it has the power to control prices, and when it has the power to control prices it will inevitably advance prices, unless restrained by the government.

This regulation of charges by government is not a revolutionary idea, nor even a radical idea, nor even a new idea. It is in operation in many countries abroad and in many cases in our own country. It is generally limited to what are classed as public utility corporations and applied to those because they are supposed to be in the nature of monopolies and to intimately affect the life and welfare of the public.

The Interstate Commerce Commission fixes railroad charges; the Public Service Commission

of New York fixes the rates of various public utilities; the legislature of New York has limited the profits of the Gas Trust of New York City and the courts have sustained them in their action.

When any productive business vitally affecting the life and welfare of the community becomes sufficiently organized to fix the price of its product at any reasonable or unreasonable figure, it is undoubtedly the right and will undoubtedly become the duty of the government to interfere in behalf of the consuming public and see that the price of the product is fixed at a reasonable and not at an unreasonable figure.

Mr. Taft may call this state socialism or whatever he pleases, but calling a thing a name does not discredit it if the thing itself is right and furnishes a solution and the only solution to an acute problem.

The fact that combination has advantages and that certain trust evils lie not so much in combination as in the abuse of the power of combination is being more generally recognized every day.

The fact that the way to prevent those evils is not to prevent combination, but to prevent and punish the specific acts which create those evils is becoming more generally recognized every day.

The fact that those evils are inherent in overcapitalization and in the power to fix prices at an

excessive figure is becoming more generally recognized every day.

That the power of supervision over capitalization and over prices or profits must be conceded to the government is being more generally recognized every day, and is being freely admitted by the more intelligent and patriotic of trust organizers.

I have maintained this position and advocated this policy for many years, and I am naturally gratified at its general acceptance.

On June 6, 1899, I wrote over my signature as follows:

Combination and organization are necessary steps in industrial progress. We are advancing toward a complete organization in which the government will stand at the head and be the trust of trusts. It is ridiculous to attempt to stop this development. It is necessary merely to restrain it within proper lines and prevent the power of the trusts from being used to raise prices or lower wages or otherwise oppress the people.

In the beginning, when red-haired men first clotted in some kind of social organization, it was observed that the strongest man secured some undue benefits by the misuse of his strength. At that time there were some who arose in the herd and proposed that a law be framed abolishing strong men and preventing their recurrence. The conflict over this proposition doubtless raged for several hundred thousand years before it was

learned that it was better to regulate and restrict strong men through the organization of society than to destroy them and abolish strength. It will not, I hope, take us as long to learn that trusts should be regulated and restricted and employed by society, but not abolished except when engaged in criminal conspiracy. The trust is a labor-saving device that can lower the cost of production. The trust is also a great power which can raise the price of its commodities, rob its weaker rivals, corrupt legislatures and oppress the public. These evil deeds of the trusts should be made criminal and adequately punished. The trusts should be regulated and restricted, but they should not be destroyed and, what is more, they cannot be.

I am not sure that my present article has added much to my earlier utterance, except in the way of elaboration. The essential idea of both articles is that combinations should be made useful to society; that the advantages of combination should be shared by the producer and the consumer; that combination is necessary to the development of business, to the creation of wealth and to the benefit of the whole community; that combination should be regulated by the government, but that it should not be destroyed, and, what is more, it cannot be destroyed.

Initial Steps in Trust Control

Compel Federal Incorporation and Prevent Overcapitalization

THERE are two compelling reasons for careful thought and intelligent legislation in regard to combination.

One reason is found in the fact that combination is continually increasing in spite of the utmost efforts of its opponents to end it.

The second reason is found in the fact that combination displays quite as definite advantages as disadvantages, and the necessity for preserving those advantages is as urgent as the necessity for eliminating the disadvantages.

The advantages of combination are the advantages of better organization, more effective operation, and cheaper production.

The disadvantages of combination arise mainly from the misuse of the power of combination, which has developed into monopoly.

If, then, combination is inevitable and in the main desirable, we must by careful thought discriminate between the advantages and disadvantages of combination, and by intelligent legislation permit the legitimate development of the

advantages of combination and prevent the misuse of the power of monopoly.

The growth of combination along harmful lines of coercion and oppression, or along even the legitimate and beneficial lines of natural development, is likely eventually to result in monopoly.

As a matter of fact, the ultimate aim of combination usually is virtual monopoly, and a Trust may be described as a combination that has reached the stage of virtual monopoly.

The conspicuous evils of the Trusts are oppression of employees, coercion of agents and competitors, and extortion from the public.

Another evil of Trust conditions is the capitalization of the power to oppress, to coerce, and to extort.

An essential and initial step in the movement to remedy Trust evils is the prevention of overcapitalization, which in a way stimulates and necessitates Trust oppression, coercion and extortion.

A Trust that capitalizes its monopolistic power to overwork and underpay its employees must overwork and underpay its employees in order to pay interest on its capitalization.

A Trust that capitalizes its monopolistic power to coerce its agents and its rivals must coerce its agents and its rivals.

A Trust that capitalizes its monopolistic power

to extort high prices will and must practice its monopolistic power to extort high prices.

Capitalization of Trust abuses, then, is one of the abuses of the Trusts and one of the incentives to trust abuses.

But there is an evil even more threatening than the capitalization of the trust power to coerce and extort, and that is the overcapitalization of this power.

A Trust that capitalizes its powers to coerce and extort is an evil; but a Trust which overcapitalizes these powers is a swindle.

A Trust that is capitalized beyond the value of its properties is capitalized for purposes of coercion and extortion, but a Trust which is capitalized even beyond the value of its monopolistic powers to coerce and extort is overcapitalized for the purpose of swindling the public, and will inevitably swindle the public.

The only way to prevent the evil and inevitable results of illegitimate capitalization of this kind is to prevent this kind of illegitimate capitalization.

Either the continued existence or the collapse of such a Trust is a calamity, and the punishment of its promoters, desirable as that may be, is not so much a requirement as the prevention of the formation of such enterprises.

Both the capitalization of the power to plunder

and excessive capitalization for purely speculative purposes can be prevented and must be prevented.

To prevent illegitimate and injurious overcapitalization, as many corporations as possible and all corporations if possible should be induced to submit their plan of corporation to governmental authority.

This governmental authority, in the interests of the investing public and in the interests of the consuming public and in the interests of sound business methods and stable business conditions, should compel every corporation to capitalize within reason its actual property and valuable possessions.

All corporations engaged in inter-state commerce can be reached by a Federal incorporation act, and those corporations not engaged in interstate commerce can and should be reached by state corporation acts with provisions similar to or identical with the provisions of the national incorporation act.

The first purpose of a Federal incorporation act is to secure uniformity of legislation throughout the entire country, instead of the different and oftentimes conflicting codes of law on the subject of incorporation which exist in the different states.

The second purpose is to secure a thoroughly

practical and practicable method of investigating and controlling the issue of great volumes of capital stock and limiting that issue to corresponding property and possessions of actual and estimable value.

To be effective, a Federal incorporation act must contain a provision compelling corporations engaged in inter-state business to obtain national charters.

On March 1st, 1907, when a member of Congress, I introduced in the House of Representatives a bill to meet the above requirements. The bill was entitled "A bill to provide for national incorporation and control of corporations engaged in commerce among the several states."

The Hearst bill was introduced under the administration of President Roosevelt, but neither the Democratic party in the House or Senate, nor the Republican party in the House or Senate, nor the President was disposed to favorable consideration of the measure at that time.

President Taft, however, about three years later, advised in a message to Congress the consideration of legislation largely along the lines of the Hearst bill, and on February 7th, 1910, President Taft's Federal incorporation bill was introduced in Congress.

The Taft bill is entitled "A bill to provide for the formation of corporations engaged in inter-

state and international trade and commerce." It has for its object the same purposes aimed at in the Hearst bill and its framework is in the main the same as that of the Hearst bill.

There are, however, three phases of difference which will be compared later.

The Hearst bill provides that all new corporations may be formed as national corporations, and all existing state corporations doing inter-state business may become national corporations upon accepting the provisions of the national corporation law.

The bill does not apply to any corporation, however, organized for the purpose of carrying on the business of banking.

The control of corporations organized under the provisions of this act is placed in the Bureau of Corporations in the Department of Commerce and Labor, and a deputy commissioner of corporations for every one of the several states is added to the Bureau of Corporations.

The deputy commissioner of corporations is compelled to maintain an office at the capital of the state from which he is appointed.

The Commissioner of Corporations is given general supervision over all the deputy commissioners, and is made responsible for the enforcement of the act. The Attorney-General is required to proceed in all instances of neglect or

omission on the part of corporations to comply with the act, and the Circuit Court of the United States is given jurisdiction to enforce the provisions of the act.

For re-incorporating existing corporations, all that is required is that the corporation shall file with the deputy commissioner of corporations in the district in which the principal office of the corporation is located the proper form of certificate.

This certificate must be duly executed by the corporation's president and secretary, upon the authority of a majority of the directors, substantiated by the written consent of the holders of a majority of the corporation's outstanding capital stock, and must state that the corporation accepts the provisions of the national act.

For the incorporation of new companies under the act, the bill provides that articles of agreement shall be filed in the office of the deputy commissioner of corporations in the state where the proposed corporation intends to have its principal place of business.

Articles of organization signed and sworn to by a majority of the directors must accompany the above agreement of association and must be filed with it.

These articles must set forth the amount of capital that is to be issued, the amount of capital

that is to be paid for in full in cash, the amount to be paid for on account by instalments, and the amount to be paid for in property.

If capital is to be issued for property, and not for cash, the articles must specifically describe the property, state its value under oath and the amount of value to be issued against that property.

An important provision of the bill is the following:

The directors who sign the articles of organization are made liable to any stockholder of the corporation for damages caused by any statement in the articles of organization which is false and which they know to be false. In addition the making of such false statements is declared a felony.

The deputy commissioner of corporations with whom the articles of organization are filed is required to examine the articles with due care and is authorized to require any amendment or any additional information that he may consider necessary for a proper estimate of the proposed stock issue.

To secure this every deputy commissioner is given the right to compel the attendance of witnesses and the production of documentary evidence and to administer oaths.

In every case where it is proposed to issue

capital stock for property the deputy commissioner of corporations must examine orally at least one of the directors who has signed the articles of organization and so obtain all possible information in reference to the value of such property.

If the deputy commissioner finds that the articles of organization conform to law and if he is satisfied with the good faith of the directors whom he has interrogated, he shall approve and endorse in writing the articles of organization and issue a certificate which shall have the force and effect of a charter.

In this way a comparatively simple method is provided for safeguarding the investing public against fictitious and worthless stock issues. But the method, while simple, is drastic in so far as it compels honesty and fair dealing.

Under this method it becomes a very difficult matter and a very dangerous matter for directors to issue capital stock for imaginary values based upon mere anticipation of future legitimate or illegitimate gain.

Under this method the capitalization of the abuses of monopoly is prevented and the conversion into stocks and bonds of the power of monopoly to extort excessive prices is made impossible.

In the same way worthless speculative stock

issues designed to be unloaded on the public for the purpose of swindling the public are made impossible.

Not only will all the necessary information about a corporation be made public for the guidance of the public, but no stock can be issued and consequently no stock can be sold which has not some corresponding value in the property of the corporation.

If any misstatements of the value of the property of the corporation are made by the directors who sign the articles of organization, those directors are made liable for damages to any purchaser of the stock of the corporation and also liable to imprisonment for felony.

Under those conditions it is hardly to be conceived that there will be either any advantage in making false statements or any inducement to do so.

The purchasing public will be protected and even the consuming public will be protected in so far as it is possible to protect the consuming public by preventing the capitalization of the power to extort high prices.

Under the Hearst bill all increased or new issues of capital stock must be subjected to the same forms, processes, investigations and examinations as original issues of capital stock, and not a share of additional stock may be legally

issued until the approval of the deputy commissioner of corporations has been obtained.

The Hearst bill prohibits the loan of the corporation's money to any stockholders, directors or officers, and in this way prevents such scandals as were disclosed in the Harriman and other investigations.

As a penalty for loaning the corporation's money to any stockholders, directors or officers, the Hearst bill makes all who assent to any such loan liable for all the debts of the corporation up to the extent of the loan and the interest upon it until the repayment of the sum so loaned.

The Hearst bill also stringently prohibits the payment of any dividend except from surplus profits.

It makes the directors under whose administration any such payment is made liable to the corporation and to its creditors for the full amount of any loss sustained by the corporation or its creditors.

The only way in which a director in the minority may escape liability for such an act on the part of a majority of directors is to cause his dissenting vote to be entered on the minutes at the time when such action is taken.

The bill then grants the usual powers to purchase, hold and dispose of property, to borrow money, to issue mortgages, and to merge with

other corporations subject to the provisions of such laws as may exist against monopolies and restraints of trade.

It then proposes to compel existing state corporations engaged in inter-state commerce to accept the provisions of the national act by imposing a differential franchise tax. In the case of corporations taking advantage of the national act, this differential franchise tax is placed at an extremely low figure.

In the case, however, of corporations engaged in inter-state business which fail to take out charters under the national act, an annual franchise tax is imposed, amounting to five per cent. upon the gross receipts of such corporations from their inter-state business.

The great advantage thus enjoyed by corporations formed under the national act would inevitably and speedily lead every existing state corporation to take out a national charter.

A tax of this kind has been held to be constitutional and the principle of using the powers of taxation in order to induce corporations to take out national charters was applied successfully in the state bank cases when the national banks were established.

The Taft bill adopts in its entirety, with one single exception, the provisions of the Hearst bill aimed at overcapitalization. The one exception

is that it does not authorize or require any oral examination by the public authorities of the directors of corporations as to the value of property against which stock can be issued.

Dummy directors might, therefore, be used under the Taft bill, whereas under the provisions of the Hearst bill a responsible director with knowledge of the facts would have to appear in person and vouch for every value before any issue of stock would be authorized and before any charter would be issued.

The Taft bill absolutely prohibits any corporation from holding stock in any other corporation. Such a provision would make impossible any plan of legitimate combination, even under the sanction of supervising authorities, and after thorough and complete investigation.

The only way in which any corporation could, under the Taft bill, effect a legitimate combination with any other corporation, would be by acquiring all of its property, and this step can ordinarily easily be prevented by a handful of dissenting stockholders such as frequently appear as plaintiffs in strike suits.

The other distinctive feature of the Taft bill is the provision which authorizes Congress to repeal the charter of any corporation that enters into any contract or combination in restraint of trade.

This feature is merely an attempt to perpetuate the existing ineffective Taft method of dealing with the combination question as exemplified in the Tobacco Trust and Oil Trust suits.

But even if this method should prove effective, the only result would be to punish innocent stockholders instead of responsible directors.

The Taft bill fails to provide any method for compelling corporations to take out national charters.

A bill to be effective must do something more than merely invite corporations to abandon the shelter of the laws of favorite states which by their laxity place a premium upon stock-watering and other get-rich-quick methods.

It must provide a constitutional method of compelling corporations to take out national charters, and that constitutional method is to be found in the differential franchise tax.

The Taft bill, in my modest and unprejudiced opinion, is not, where it differs from the Hearst bill, as good as the Hearst bill, although the Hearst bill preceded it by three years. The Hearst bill, however, probably could be improved upon and probably will be improved upon. Nevertheless, it has fulfilled a purpose in indicating the lines which legislation may take in compelling corporations to submit their incorporation to governmental supervision.

The bill has also indicated the methods by which governmental supervision can effectively and properly control and limit the capitalization of corporations for the benefit of business and for the protection of the public.

When Combination Becomes Monopoly What Shall Fix Prices?

Monopoly in the Sole Interest of Monopoly or Government in the Interests of the Whole Community?

THE most difficult problem to approach in discussing the question of combination is the problem of the regulation of prices under monopoly.

It is obvious that combination is growing and extending in the direction of monopoly in almost every large line of business.

Monopolies are sometimes created by illegal coercive measures.

Monopolies are sometimes created for purposes of overcapitalization and speculation.

But even where monopolies are not created by coercive measures, or for speculative purposes, they gradually tend to form, because of the convincing and compelling economic advantages of combination and because of the necessity for complete co-operative organization to handle in the most systematic and effective manner the marvelous production of modern business.

There are stringent laws against trust coercion

and oppression, and these laws should be enforced to the limit of their criminal penalties.

There should also be stringent Federal incorporation laws to prevent trust overcapitalization and wildcat speculation, and these laws should be strictly applied and enforced.

But after the enforcement of the criminal clauses of the Sherman act has prevented the formation of monopolies by coercion, and after an effective Federal incorporation act has prevented the formation of trusts for speculative and stock-jobbing purposes, what is going to be done with the monopolies that form naturally through general and rightful recognition of the advantages of combination?

A monopoly that is formed naturally and legitimately is just as much a monopoly as one that is formed unnaturally and improperly.

The one, if it is a monopoly, has just as much power to control the market and extort high prices from the consuming public as the other.

The monopoly that is formed by genius, by persistent effort, by energy and enterprise is just as much a monopoly as the one that is formed by force and fraud.

It may not be as hateful, but it is just as powerful.

It may not have been as destructive in its

formation, but it is just as dangerous in its operation.

It may not have been as oppressive to its opponents and competitors, but it is likely to be just as extortionate in its dealings with the consuming public.

If it is a monopoly, no matter how formed, it possesses the power of monopoly, and, possessing the power of monopoly, and having the advantage of an exclusive market, it can put the prices of its products unreasonably low to discourage competition, or it can put them unreasonably high to extort unjust profits from the public.

Obviously, it can do both of these things, and unregulated, unrestrained, uncontrolled, it obviously will do both of these things.

Both are unjust.

Both are injurious.

Both are against public policy.

Both must be considered and dealt with.

How are they going to be dealt with?

Of course, no one would for a moment consider government regulation of prices or profits if there were no necessity for considering such governmental action.

Of course, no one would advocate that government should interfere in business except where there is absolute necessity for government to interfere to protect the public.

But where there is absolute monopoly, there IS such absolute necessity.

What else is possible? ¡What else can be done?

Competition was wont formerly to regulate prices, although in an irregular and haphazard way, in a way that satisfied us, although unsatisfactory because we then knew of no superior system.

Competition and the unrestricted law of supply and demand regulated prices or rather controlled prices.

Prices, as a matter of fact, were not regulated.

They fluctuated, and they fluctuated from very low prices, ruinous to the producer when the product was plentiful, to very high prices, burdensome to the consumer when the product was scarce.

Natural competition regulates prices very much as natural rain supply waters crops.

Sometimes, crops are drowned out because of too much water, and sometimes, they are dried out because of too little water.

But now competition no longer regulates at all. The law of supply and demand does not control monopoly.

On the contrary, monopoly controls the supply, modifies the demand, and regulates the price to suit its own requirements.

Combination regulates prices as irrigation waters crops.

The quantity of water is limited to conditions and requirements, and the only question is how and by whom the quantity of water shall be controlled for the best interests of the whole community.

Prices are regular enough now. They do not fluctuate. But being regulated by monopoly, they are regulated in the interest of monopoly.

Prices are regulated at the highest point that the "traffic will bear," and vary only when the traffic will bear more.

This regular or steady regulation of prices, even by monopoly, has some actual advantages, despite its obvious disadvantages.

It has advantages to the producer, although not to the consumer.

It has advantages in the creation of wealth, although not in the distribution of wealth.

This system is at least systematic. Here is at least organization and orderliness.

Here the economic advantages of combination are operative, even though not justly and equably operative.

The consuming public, through the natural and inevitable selfishness of the promoters of combination, is debarred from sharing in the advantages of combination.

We have cheaper production, but not cheaper prices, and there is nothing to compel cheaper prices; not competition, for it no longer operates; not the law of supply and demand, that law has been repealed; not altruism, for in business altruism does not exist; not public opinion, for the motto of monopoly is "the public be damned."

Then WHAT?

Let us have the courage to face the problem honestly and to reach the legitimate conclusion.

There are various methods of evading the subject, one of which the Supreme Court has adopted. But all evasion is ineffective. Trickery is but a temporary subterfuge.

When the problem is acute and actual, the solution must be genuine and final.

If the evils of monopoly are to be eliminated, there are only two effective ways:

One way is to destroy the evil and with it the monopoly which creates that evil.

The other way is to separate the evil from the monopoly and destroy only the evil.

One way is to prevent combination, and the other way is to permit combination, but prevent extortion.

One way is to compel business to compete against its will and contrary to its advantage, and the other way is to allow business to combine and to obtain the full advantage of combination,

while compelling it to share that advantage with the public.

When considering the one alternative of destroying combination, we must weigh carefully the two most vital reasons for not destroying it or attempting to destroy it.

One of these is the convincing reason against substituting an inferior method of production for a superior one, against compelling a wasteful and cumbersome method to be employed in place of an efficient and economical one.

The other reason is the impossibility of doing anything so contrary to nature and to natural development, so opposed to universal advantage and advancement.

How can we benefit by replacing organization with disorganization, system with disorder, harmonious co-operation with conflicting individual effort?

A faculty for organization is a measure of mental development.

A capacity for systematic effort is an evidence of business ability.

Combination is the expression of greater experience, better knowledge, and higher intelligence, the result of education, the effect of gradual appreciation of certain fundamental principles and the transmission of those principles into practical operation.

Combination means economy. Combination means efficiency. Combination means system and simplicity, the elimination of unnecessary cogs in the business machinery.

Combination means increased production and decreased effort. Combination means stability, permanence, confidence, certainty, and every able business man knows it.

As a consequence, the Big Business of the country will positively be conducted in combination, either open or secret.

If government persecutes combination, it will make combination secret.

If government recognizes and allows combination, it will make combination public.

If combination is secret, it cannot be regulated or controlled.

If combination is public, it can be regulated and controlled in the interest of the public.

The inevitable, unavoidable, inescapable conclusion is that combination should be permitted, should be compelled to be public, and should be regulated in the interest of the public.

Then how is it to be regulated, and what is to regulate it?

Not combination itself, because combination will not regulate itself unselfishly; not the public, as a body, for the public has not the knowledge or organization to do it; but the government, the

common representative of both the consuming public and the business interests.

Whenever business demands of government the right to combine, then business must concede to the government the power to impose conditions that will compel combination to operate for the public good.

If the combination constitutes a merger or monopoly extensive enough and powerful enough to fix prices, then the government must require that the prices fixed shall not be unreasonable or to the detriment of the public.

Thus the advantages of combination will be secured, not only for the producer, but for the consumer.

Thus cheaper production will mean cheaper prices; thus the advantages of combination will become general, for the public will receive its fair share of them; thus combination itself will become popular, for it will mean not a burden upon the public, but a benefit to the public.

I have discussed in this article the regulation of prices rather than the limitation of profits, because the two are but different forms of the same proposition.

The limitation of profits is as advanced a step as the regulation of prices, but not as practical a process.

The regulation of prices in no way interferes

with or discourages economy or efficiency of operation, compactness of organization, or any of those business advantages to promote which combination exists and is to be allowed to exist.

On the other hand, limitation of profits removes one of the main incentives to economy and efficiency in the perfected system possible under combination and necessary for cheap production.

If business (no matter how economically and efficiently it may be conducted) is limited in its profits, then, inevitably, less attention will be paid to the economy and efficiency that make for cheaper production and cheaper prices.

But if business be merely restrained from charging an exorbitant price for its products and allowed to appropriate as profits all that can be created within that price by economy and efficiency, then economy and efficiency will be maintained at the highest degree of perfection and the full advantage of combination will be developed and secured.

The regulation of prices, then, secures for business a larger opportunity and for the public a greater and more definite benefit.

Inasmuch as the regulation of prices is merely an enlargement of powers already possessed by the government, it would be well in providing for the regulation of prices to adhere as closely as

possible to the means and machinery already employed by the government.

The regulation of prices is merely an extension of the idea involved in the regulation of rates.

The regulation of the charges of monopolies created by governmental grants and franchises is merely extended to include the regulation of the charges of other monopolies equally powerful and equally important to the public welfare.

The Inter-state Commerce Commission is empowered to fix railroad rates.

A sufficient enlargement of the number and a sufficient extension of the powers of that commission would form a body able and fitted to deal with the problem of more general rate or price regulation.

When a member of Congress, I introduced bills giving the Inter-state Commerce Commission the power to fix railroad rates, creating the Inter-state Commerce Court, and proposing a Federal Incorporation act.

An elaboration of the machinery necessary to perform these recognized functions of government would be sufficient to enable the government to perform without derangement or difficulty the enlarged functions involved in the control of combination and the regulation of prices.

The Department of Commerce and Labor, with its agents appointed from every state and repre-

senting it in every state, as provided for in the Hearst Federal Incorporation bill, would possess in its records all the facts relating to the size, character and condition of every Federal Corporation.

The Inter-state Commerce Commission, increased in numbers and divided into various departments, would deal with extortionate charges and monopolistic abuses in various lines of business.

The Inter-state Commerce Court, increased, if necessary, in numbers and divided into divisions, would review and enforce the findings of the Inter-state Commerce Commission.

I would add to my original Commerce Court bill, however, a clause providing that the justices of this court be appointed for twelve-year terms, and that one-third of these justices end their terms during every presidential term of four years.

The object of this provision is to allow the President of the United States, the chief elected representative of the people of the whole United States, largely to alter the character and complexion of the Commerce Court during his term of office, in conformity with the principles and purposes entertained by the citizens at the time of his election.

In two presidential terms, the character and

complexion of the Commerce Court could be completely altered fully to harmonize with the principles and purposes of the people as expressed by the successive elected representatives of the people.

In these days of insolent assumption of legislative functions by the courts, some such provision is necessary to restrain their arbitrary appropriation of power, and such a provision might indeed be applied by a constitutional amendment to the Supreme Court of the United States, if unconstitutional assumption of legislative functions by the Supreme Court should make further constitutional restraint necessary.

In any event, such a provision applied to the Commerce Court would tend to obviate the present unsatisfactory situation where an Inter-state Commerce Court is mainly engaged in upsetting and reversing the necessary acts of the Inter-state Commerce Commission, performed in accordance with the needs and demands of the country.

With the justices of the Commerce Court appointed for limited terms, as above described, and with the members of the Inter-state Commerce Commission, the Secretary of Commerce and Labor, and all his representatives removable at the pleasure of the President, the people need only elect an honest and able President to secure an

able and honest conduct of all the important affairs with which these courts and commissions would have to deal.

Matters under the control of these courts and commissions and subject to serious difference and dispute would be submitted as issues in presidential elections and so decided.

Business would be conducted, as it should be, under a generally wise and judicious control and in the best interests of the whole people, who, after all, make business possible and make possible the success of every business.

Any systematization and organization and reasonable regulation of business along these lines would be a boon to business.

It would replace disorder and disorganization with order and organization.

It would replace uncertainty with certainty.

It would replace perplexity and confusion with definite knowledge, and, finally, it would replace ignorant, irregular attack with intelligent, systematic regulation.

Business should prosper, not only because of such assured conditions, but also because of the fullest freedom to adopt combination and modern methods conducive to cheaper production.

The public should be equally benefited, for they would participate in the prosperity and get the benefit of cheaper products in cheaper prices.

Under such a scientific system of combination, brought to a pitch of highest efficiency, the greatest amount of wealth would be created; and under reasonable regulation by government, the division of wealth would be just and equable and impartially advantageous to all.

Progress

THE world advances constantly. At the end of every cycle a full cycle of progress has been made. The only question is whether that progress shall be made in a systematic and orderly manner, or whether it shall be made in a spasmodic and disorderly and perhaps destructive manner.

There is always progress, political progress, economic progress, mental, moral, material progress.

The one point for organized society to consider is whether that progress shall be allowed to flow naturally and regularly and beneficially, like a mighty river, or whether impeded and obstructed it shall at length burst tumultuously from constraint and sweep forward irresistibly like a flood.

In the one case it reaches its level properly and peacefully. In the second case it reaches ultimately the same inevitable level, but only after great damage and devastation have been wrought.

The measure of progress is the improved condition of the mass of the people, and this is the only measure of true progress, be the improvement political or economic, mental or moral or

material. There is an inexorable law compelling progress and development and improvement.

Whatever does not progress is eliminated. Whatever continues to exist must continue to progress.

While all human society progresses, develops, improves, there remain still different levels of society, different measures of merit, different degrees of reward, different grades of intelligence and enlightenment.

The more favored elements of society are prone to imagine that the progress of the mass of humanity will interfere with their special advantages, and these more favored elements are therefore often induced to oppose progressive movements and progressive measures in a manner that is no more selfish than it is stupid.

It has often been said that the average citizen of to-day is far better off than the king of a thousand years ago. He certainly is better off in education, in moral character, in comfort and material advantage, and particularly in opportunity for achievement and advancement.

Still, there are others in the social scale above the average citizen with greater responsibilities and greater opportunities than he, even if not with greater actual advantages.

The progress of the mass in the past has not interfered with the peculiar advantages and op-

portunities of the upper ranks of human society. On the contrary, these upper ranks have advanced as well and as much. They, too, have advanced politically and economically, mentally, morally and materially. They are no longer subject on the one hand to the whims of a despot, nor on the other hand to the unstable conditions of ill-organized society.

They can accumulate wealth in peace and possess property in security. They exercise more genuine power than ever before and enjoy more legitimate rewards.

Yet, because of their mental, moral and political advancement, they are more disposed than ever before in history to limit their personal pleasures and employ their time and their opportunities in the service of humanity and solely to secure the approval of humanity.

We are making progress to-day and will be compelled by inexorable law to make our full share of progress.

That progress will make the average citizen of a thousand years from now incalculably, inconceivably ahead of the most favored individual of to-day in every human quality and material benefit.

And still the favored individual of that later day must and will surpass the average individual of that day in ability, in wealth, in responsibility

and opportunity, and in some form of recognition and reward.

Wealth we may no longer strive for, but we will still strive for some coveted prize, and the possession of that prize will be the reward of our effort and our higher merit.

If moral, material and political progress benefits all grades of society, then all classes and conditions of men should labor in behalf of human progress and progress should not be urged merely by the less favored elements of society and opposed by the more favored elements.

Progress must be made and will be made, no matter who approves or who opposes. It will be made judiciously and considerately, with the aid of the more favored members of society, or it will be made sternly and relentlessly, and perhaps even violently, by the less favored elements of society.

It will be made carefully and cautiously by the conservative elements, or it will be made more ruthlessly and recklessly by the radical elements.

In speaking to his associates in business the other day, Judge Elbert H. Gary said that the people demanded certain political and economic reforms, that they were entitled to these reforms and that the favored classes would find it desirable and advantageous to co-operate in bringing about these reforms in the most orderly and

equable manner lest these reforms be brought about in a somewhat less orderly and less equable manner.

Judge Gary stated this particular phase of the situation with great wisdom and justice. He doubtless exaggerated the situation when he spoke about the possibility of another French revolution, but he did not exaggerate the necessity for reforms and the desirability of the conservative classes co-operating in securing these reforms.

There will be no French revolution where there is free expression of popular opinion and free exercise of popular will,—where popular rights are respected and popular liberties are preserved.

The French revolution was the result of attempts unnaturally to repress progress, to deny the benefits of the advancement and improvement of the world to the mass of the people.

The French revolution was the destructive flood which broke all bounds and carried human progress forward to its natural level.

Progress has been made since the French revolution. Progress has been made since our own revolution. Material, economic, political progress has been made in our own time.

Still there are many progressive measures which are crying for recognition and which must, in justice and in wisdom, receive consideration

and recognition by all unprejudiced elements of the community.

Within the past few generations mechanical improvements and inventions have enormously increased production and added immensely to the wealth of the world.

The advantages of this greatly increased production have been largely appropriated by the more favored classes, by the employer of labor, the owner of established institutions, the promoter of enterprises.

Increased production, increased earnings, have mainly meant increased profits or increased capitalization, and the less favored classes have not at once received a just proportion of the advantage of increased production and in created wealth.

Unrest is but recognition of injustice. And the way to allay unrest is to remedy injustice.

The demand of the less favored classes for a proper proportion of the advantages of the progress and development which is created by all and belongs to all must be met and satisfied.

The demands of the people throughout the world for more equal political rights must also be met and satisfied.

In the United States these problems are less acute than elsewhere. Still there are phases of the problem here which must be solved, and they

should be considered and solved calmly and judiciously, without passion or prejudice.

The masses of the people to-day are more enlightened, more capable than ever before, more confident of their own knowledge and ability, more able to govern wisely and impartially, more disposed to take the power of government into their own hands and better fitted to exercise it for the general good.

The progressive political program in the United States is both moderate and sound. Its purpose does not go beyond the ideas of the founders of this republic, or beyond the obvious right and recognized ability of the citizens who constitute this republic.

This magazine declares its devotion to the cause of progress and will employ its best efforts to promote that cause.

It will discuss in its columns every phase of progress, and will endeavor to promote all legitimate advance and development without dissension and without disturbance.

It will strive to allay all unnecessary antagonisms and to unite all classes in harmonious support of such progressive measures as will secure exact justice for all and the fullest advantage for all.

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